

**REPONSES TO ISSUES AND COMMENTS
TRIBAL CONSULTATION PROCESS
FY 2005 APPLICATION KIT
Small Ambulatory Program
Indian Health Service**

SAP Tribal comments received from:

ABERDEEN AREA IHS

- Tribal Health Director, Three Affiliated Tribes, New Town, ND

ALASKA AREA IHS

- Health Director, Tyonek, AK

BEMIDJI AREA IHS

- Chairwoman, Bemidji Area Tribal Advisory Board, representing 34 Bemidji Area Tribes and 5 urban programs, and cosigned by Director, Bemidji Area IHS
- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Upper Sioux Community Board of Trustees
- Bemidji Area IHS Facilities Manager

CALIFORNIA AREA IHS

- Chairman, Karuk Tribe of California
- Executive Director, Health and Human Services, Karuk Tribe of California
- Executive Director, Lassen Indian Health Center
- California Area IHS Facilities Manager
- Associate Director, OEHE, California Area IHS

PHOENIX AREA IHS

- Director, Reno Sparks Tribal Health Center

PORTLAND AREA IHS

- Chairperson, Northwest Portland Area Indian Health Board of Directors
- Grants Manager, Stillaguamish Tribe of Indians, Arlington, WA
- Portland Area IHS Facilities Manager

ISSUE: Method and period of time allowed for tribal consultation

COMMENT:

The notification to tribes only and not to all the tribal health programs coupled with the very short time period of 30 days was insufficient to allow for proper tribal health program notification and consultation.

RESPONSE:

The process that was followed was in compliance with the Conference Report that accompanied the FY 2005 appropriation, which required a 30-day tribal comment period prior to the issuance of the final solicitation (Application Kit).

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ISSUE: Format used for Table of Contents and use of Section Cover Sheets

COMMENT:

Expand the Table of Contents and remove the cover sheets for the Sections.

RESPONSE:

The Table of Contents has been expanded. The Section Cover Sheets are desired.

ISSUE: Combining FY 2005 and FY 2006 funding into application process (Page I-1)

QUESTION:

Will the funds being received in FY 2006 be incorporated into process?

RESPONSE:

The Application Kit will be issued for FYs 2005 and 2006 funding.

ISSUE: Use of applications for subsequent fiscal years (Page I-1)

QUESTION:

Will the application be used for selections of projects beyond fiscal years 2005 and 2006?

RESPONSE:

Applicants should be aware that in the past the Congress has directed the IHS to use the rank-order list of an application process when funds are appropriated in immediate subsequent fiscal years so prompt awards can be made. The application would not be re-evaluated, rated and ranked if the Congress directs the IHS to do this.

ISSUE: Number of copies needed for the application package (General Information, Pages I-2, II-2, & II-3)

COMMENT:

Clarification is requested of the need for two originals and three signed copies. This appears to be five originals. It is unclear the difference between the two types. In addition, an electronic copy is required. This seems excessive.

RESPONSE:

Clarification has been provided in the Application Kit that the application packages are to contain for the IHS Headquarters two originals with original signatures and two copies of a signed original and for the IHS Area one copy of a signed original. This provides the number of copies needed for the review and award processes. The requirement for an electronic copy

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has been reconsidered for this application process and the requirement was removed from the final version of this Application Kit. Future applications will include the electronic submission type that is being phased in for other Federal assistances.

ISSUE: Metric use (Page I-3)

COMMENT:

Dept of HHS has already stated Metric did not apply to TRIBES. If this is a program that's sole purpose is to provide funding to Tribes to construct health care space, why are we requiring them to comply with the metric standards?

RESPONSE:

Complying with the Metric Act, metric is being used in the SAP Application Kit. SAP awardees may elect to construct their projects in either metric or English units.

ISSUE: Use of \$2 million cap (Page I-3)

COMMENT:

The \$2 million dollar cap on SAP awards severely limits the original intent of the legislation. This was not meant to be a "seed" program. Since tribes are incurring huge staffing costs, in order to provide the standard IHS healthcare package, for the relative minor cost of construction, IHS should advocate for the tribes for more total funding for SAP and raise the limit substantially. The positive outcome would be more primary healthcare services would be provided closer to the patients, reducing costly services later, without the long term high cost of staffing and create more projects in more congressional districts. It's a win-win situation that the IHS must advocate for the tribes to the congressional committee.

RESPONSE:

Congressional language accompanying previous appropriations expressed a desire for the IHS to establish a dollar cap to ensure that funds were being provided for SAP projects that would not be eligible to compete in the IHS Health Care Facilities Construction Priority System. Accordingly, the \$2 million cap was established to address this Congressional concern.

ISSUE: Not considering a project if on-site construction has started (Page I-4)

COMMENT:

The proposed application kit needs clarification as to why a tribe is ineligible if it has already executed a construction contract. Since the SAP seldom provides the full funding as allowed by legislation, the tribes have multiple sources of funding to complete the project and these sources often have their own deadlines such as the HUD Community Development Block Grant

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(CDBG). If the tribe is unsuccessful in the SAP, they will either cut the scope of the project or find another source of funding such as a loan. They cannot hold a project indefinitely awaiting the SAP portion for this or subsequent fiscal years. **IF**, IHS funded 100% of construction as allowed, then the tribes would be able to hold off executing a contract.

RESPONSE:

The language in the authorization legislation is futuristic, not retroactive. Accordingly, it is understood that the Congress is not funding projects that have on-site construction started. Once a construction contract has been executed, the applicant essentially does not meet the need criteria in the authorizing language.

ISSUE: Definition of construction (Page I-4)

COMMENT:

A PL 93-638 Subpart j contract, even for design is a "construction" contract in the opinion of officials. This is a major problem area based on past Agency decisions. If a Subpart J contract is awarded, HQ staff has stated per the Congressional Rules, any Subpart J is a Construction Contract, thus, even if you have awarded a Subpart J for only IHS funding Planning and Initial Concept Development or even Design; then per HQ position this project, though not funded for actual construction of sticks and mortar, is "construction" and is EXCLUDED from consideration under SAP. A subpart J is too broad as defined in the package. The government needs to limit consideration if the Subpart J funds actual construction and excludes Planning, Preplanning, Concept development, and Even Design. These functions should be allowable and thus a project eligible for SAP. The government has needed to limit or not provide funds if a project is already awarded to actually build the building but as written 'any activity funded' with any part of a subpart J precludes consideration.

RESPONSE:

It was not the intent of the IHS to use the sub-part "J" to define construction or to exclude projects that have been planned or designed prior to a SAP award. Appropriate paragraphs in the Application Kit have been modified to reflect whether or not on-site construction has started. If on-site construction has started or will be started prior to a SAP award, the proposed project is not eligible for SAP funding.

ISSUE: Method of awards (Pages I-4 & I-6)

COMMENT:

Construction Contracts is apparently the Agency Preference but shouldn't Tribes have the option of a GRANT since this was initially developed by TRIBES as a GRANT program?

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RESPONSE:

When the IHS originally established the implementing procedures for the SAP it was quickly determined that the IHS should use the hybrid P.L. 93-638 contract as the means for awarding the SAP funding, since that choice was available to the IHS. The use of this method for making SAP awards was the best for all concerned, allowing for awards to be made quicker without the restrictions imposed on grant recipients. Accordingly, this understanding was shared with the Congressional appropriators and language authorizing such was included with the subsequent appropriations. All SAP awards to date have been made using the hybrid P.L. 93-638 contract and it has become the accepted method for SAP awards.

ISSUE: Use of other IHS funding (Page I-4)

COMMENT:

Clarification is needed for the award condition that no other IHS funding may be used for the SAP project. This is unacceptable as written, especially with less than 100% funding by SAP. There are legitimate other IHS funds that are needed as part of the project. These may include M&I funds, equipment funds, reprogrammed or carryover funds, or new initiatives such as the electronic health records or diabetes.

RESPONSE:

The IHS is prohibited from allowing two sources of IHS funding to be used for the same project ("double-dipping"). The IHS can allow the applicant to participate in the IHS Replacement Equipment Program and receive equipment funding for the non-IHS funded portion of the SAP project, and the Application Kit has this clarification included now. The awardee is responsible for all project costs over and above the IHS SAP award. However, the applicant can apply for and receive Federal funding from other Federal agencies to augment that which is received from the SAP.

ISSUE: Use of other Federal funding (Page I-4)

COMMENT:

The tribes should be allowed to apply for equipment funds for the portion of the project above the 2 million dollar cap that were funded with non-IHS funds. The proposed language states that no other IHS funds may be used on the project. This could be amended to state no other IHS construction funds may be used on this project.

RESPONSE:

The IHS is prohibited from allowing two sources of IHS funding to be used for the same project ("double-dipping"). The IHS can allow the applicant to participate in the IHS Replacement Equipment Program and receive equipment funding for the non-IHS funded portion of the SAP project, and the Application Kit has this clarification included now. The awardee is responsible for all project costs over and above the IHS SAP award. However, the

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applicant can apply for and receive Federal funding from other Federal agencies to augment that which is received from the SAP.

ISSUE: Perceived imbalance of funding process (Page I-4)

COMMENT:

Politics. Only <1-3% of population is benefiting by current and proposed systems, which if continued will continue the gross imbalance. The proposal in Sept 2004 was to assist 5-8% per year with an alternative system for funding additions, renovations, and staffing for ALL facilities regardless of size.

One of the strongest arguments is the Snyder Act. It did not say fund only tribes who have reservations with Army forts... it stated to fund programs for American Indians/Alaska Natives! (without regard to race, tribe, or location! implied.) In Portland and Bemidji for example, you have tribes which were terminated and when restored they did not restart at the level of a location with an existing program. Current systems fund those based on already being there, not based on need. Historical disparities will only magnify and create larger problem later.

It is difficult to swallow when asking one group or Tribe to forgo increases until another Tribe gets up to minimums but then what is fair? Should one location have CHS to level 3 or 4 and MORE funding when another is level 1 only and people are dying too early! The fear is Congress will only see the Indians that do not need more dollars when they have not seen a majority population of tribal locations which have essentially NO access to basic care and only get crisis or Level 1 care!

RESPONSE:

The expressed issues cannot be resolved in the SAP application. In accordance with the authorizing legislation, to be able to participate in the SAP the applicant must be operating an Indian health care facility pursuant to an existing health care services contract or compact under P.L. 93-638.

ISSUE: Exclusion from consideration (Page I-4)

COMMENT:

It is an equality issue. NO Agency can continue to fund programs which exclude a class or group to the disadvantage of another. HUD funds low cost housing based on poverty, not race or Tribe or state.... You will get some disparity base on regional costs but not on Age, Race, or color! Recall how CMS funds Medicare/Medicaid.... all regions are funding same except for local costs adjustment I.e. NY more than W.VA. as CA more than ND but on a true costs basis all are funded to the same "NORM" or "MEAN". Some how IHS has got to correct the disparity.

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RESPONSE:

The program authorization establishes the parameters for the SAP and stipulates who can participate, and the IHS cannot change those conditions during the selection process.

ISSUE: IHS not having had prior ownership (Page I-4)

COMMENT:

This may need legislation to change. What if a tribe assumed ownership of a building that the Agency funded in pre 1974? At some point in time the Tribe has assumed ownership for such a protracted period the issue of prior Agency funding one would think would be moot.

RESPONSE:

The current law does not specify a facility age that would make the existing facility no longer subject to this exclusion from eligibility. As the law is written, IHS has no option but to exclude all "facilities owned or constructed by the Service".

ISSUE: Minimum eligibility thresholds preclude participation by smaller tribes (Page I-5)

COMMENT:

The requirements for 2000 eligible (IHS census population) Indians in the service area **AND** to serve no less than 500 eligible (IHS active user population) continues to unintentionally eliminate needy applicants. This issue was highly protested during the three previous funding years and IHS has made no attempt to request a change to the Congressional committee though other changes have been made. The **AND** needs to be replace by an **OR**; and/or decrease the 2000 to about 1300 which will then put it in the range that IHS uses as a standard to meet the minimum service threshold of 4400 PCPVs. If the wording is allowed to remain in the application kit it creates an artificial gap that discriminates against many small tribes that SAP was intended to serve.

RESPONSE:

The IHS is aware of the concern that Tribes with populations less than the SAP thresholds are not eligible to participate. Unfortunately, the requirements contained in the Application Kit reflect the specific requirements of authorizing legislation, the Indian Health Care Improvement Act (IHCIA), Public Law 94-437, Section 306. The IHS administratively cannot change or modify the Congressional requirements. The IHS has proposed language changes addressing this issue for the IHCIA re-authorization, which has not been acted on by the Congress yet. Also, the tribal steering committee for the IHCIA re-authorization has proposed language that would reduce the population thresholds for the SAP. At this time the IHCIA has not been re-authorized and the IHS is bound to follow the current law in this Application Kit.

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ISSUE: Eligibility thresholds and population figures to be used (Pages I-5 & III-6)

COMMENT:

The thresholds of 500 and 2,000 will continue to be a problem for small tribes who are excluded at the present (and potentially for 10--12 yrs before a new Priority System will fund small communities) agency funding methods. It is understandable to limit at the upper end but not at the lower end. Small Ambulatory was meant to address the small populations as a way for them to qualify for construction funds. They had no other avenue to seek funding. The threshold should be changed from 2000 potential users in the SDA to 1250 which equals the minimum 4400 PCPVs (3.52 visits/yr/patient). The minimum eligibles in the SDA should be calculated using the latest official US census numbers at the time of the application. These could be adjusted using the HSP growth number for the out years. This should be defined so that all applicants are measured with the same standard. Tribes with less than 500 users are not asking for full service facilities. They are trying to establish limited direct services because they do not have adequate Contract health Funds to address their needs.

RESPONSE:

The IHS is aware that the population caps exclude smaller tribes. These thresholds are specified in authorizing legislation and the IHS can not change the requirements. Comments pertaining to the authorization language have been provided in the P.L. 94-437 reauthorization process and proposed changes are being considered by the Law makers. The IHS is working to make changes to this language in the next SAP appropriation. For the fiscal years 2005 – 2006 SAP, the population thresholds remain in accordance with the law.

The populations to be used in the certifications required on Page III-6 are to be the latest certified population. The service population will use the 2000 “bridged” census population projections. The Service Population for the opening year of the facility will be provided. The user population will use the FY 2004 official IHS user population adjusted to the opening year and the open year plus three years using a ratio from the service population projections.

ISSUE: Method used for census population (Pages I-5 & III-6)

COMMENT:

The census value needs to be clarified. Using the 1990 census and projecting as used in the previous SAP awards is unacceptable. The 2000 census was available and the IHS guideline did not clarify it would be anything other than the most current values available. Many California tribal health programs were just starting to develop and expand and the old census severely under counted them. The new census that allows multiple race designations is more accurate since many IHS clients may not register with the census as being primarily Native American but may register as a member of a federally recognized tribe. The multiple designation allows for this. In lieu of the mismatch of the 2000 population with the IHS standard of approximately 1300, the IHS should allow leniency on this number. The 500 active users is the more important number. The criteria for projecting the populations to the new clinic’s opening day need clarifying.

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RESPONSE:

The populations to be used in the application are to be the latest populations certified by the Headquarters Statistics Office as presented in Section III on Page 6 of the Application Kit. The service population will use the 2000 “bridged” census population projections. The service population for the opening year of the facility will be provided. The user population will use the FY 2004 official IHS user population adjusted to the opening year and the open year plus three years using a ratio from the service population projections.

ISSUE: Capacity requirement for completed project (Page I-5)

COMMENT:

The requirement to “have a total capacity appropriate for its projected service population” and “have adequate financial support available for providing the services” tends to imply that the tribe must provide full services and have the full size clinic though SAP may only be paying a small portion of the cost. This further obligates the tribes to incur additional staffing costs for a building only partially supported by IHS for its construction and none of the increased staffing costs. These award conditions also conflict with the IHS minimum threshold of 4,400 PCPVs for primary care health services and the requirement that SAP serve populations less than this.

RESPONSE:

The capacity requirement is directly from the authorizing law. The statement, “have a total capacity appropriate for its projected service population” has been defined to mean the user population. The SAP Application Kit does not include any requirement for the SAP to be less than 4,400 PCPVs.

ISSUE: The SAP is perceived to be for health care facilities with less than 4,400 PCPVs (Page I-5)

COMMENT:

The authorization and award condition to serve only communities with less than 4,400 PCPVs is not part of the authorization and does not meet the intent of the congressional language accompanying the authorization of the SAP. The intent was to provide construction funds for tribes too small to compete on the IHS priority system. “Compete” is the key word, not mathematically eligible. The use of 4,400 PCPVs is the IHS minimum threshold to be mathematically eligible. By IHS standards, populations of 1,300 and smaller should not be in the direct healthcare business but 638 tribes have shown that populations of users of 500 can financially succeed. IHS has seldom built facilities below 40 to 50,000 square feet which exceeds the largest facilities in California.

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RESPONSE:

Although the intent of the SAP is for small health care facilities, the SAP Application Kit does not include any requirement for the SAP to be less than 4,400 PCPVs.

ISSUE: Amount of supporting documentation (Page I-6)

COMMENT:

The kit's direction to eliminate the amount of supporting documentation is questionable since much of the scoring is subjective and such documentation may be necessary to expand on a tribe's unusual situation other than the limited space allowed.

RESPONSE:

The application will be reviewed and evaluated considering only the information requested. The requested information will provide all that is needed for rating the application.

ISSUE: Scoring criteria (Pages I-6 & II-6)

COMMENT:

The scoring criteria and the process needs to be looked at. A tribe with resources and an in house construction company outscores a small tribe with multiple funding sources and no identified general contractor. This continues to favor the advantaged over the disadvantaged. The scoring criteria need to be clearly defined. You cannot exclude a Tribe that exceeds the supportable space from the process if it is not stated in the application as a factor. This was a problem with the process in 2001. The Tribes were told they could apply in each of the three years and then the process was closed after the first year.

RESPONSE:

The SAP scoring criteria does not give preference to tribes with in-house resources. Scoring for construction capability is dependent on the applicant knowing how he will provide the necessary construction capability whether it is through in-house management or by contracting for the appropriate construction management services. The rating factors starting on Page II-6 provide the guidance that will be used in the rating process.

Applicants are not excluded from applying if they exceed supportable space. However, it should be obvious that an applicant who exceeds their supportable space would get far fewer points in the "Need For Project" score than an applicant that has less than their supportable space.

The Application Kit now includes two fiscal years (2005 and 2006) for which funding are available. More than likely the previous actions by the Congress for FYs 2002 and 2003 would not be followed for possible future year funding since the IHS needs to convert the application process to conform to the new interactive electronic submission requirements.

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ISSUE: Use of Federal and Health Disparity Indexes vs. equality vs. project need in selection process (Page I-6)

COMMENT:

Have a system which brings up Federal Disparity Index (FDI) and the Health Disparity Index (HDI) for ALL (Note,, Navajo and Oklahoma both improve as well as others once you get every one up to >40-45% Level of Need.) Any system should bring up the FDI and HDI for the lowest first. The numbers prove the lowest can be raised to a threshold within 3-6 yrs and then ALL come up. If ALL come up then all benefit, it is the rate of catch up that is different (Lowest catch up faster while those who have funding at highest level are delayed - as they should be). The underlying principle of the FDI has already received considerable national debate and there is agreement that the lowest funded programs should receive a larger boost to bring them into equity with the better funded programs. The Agency may want to look to the EPI centers to generate and tabulate this data for the facilities.

RESPONSE:

The approach for SAP selection is different from that being considered for the proposed new IHS priority system. Most of the SAP selection criteria (95%) look at the need for the project, the ability of the applicant to complete the project and provide the services required under the authorizing legislation. These are considered the essential selection components to ensure that selected projects are accomplished in accordance with the SAP authorizing legislation and that needed services reach the eligible users.

ISSUE: Allow more time for applicant and IHS Area to prepare application (Page I-7)

COMMENT:

The proposed time period of 30 days for submitting applications is far too short for the complexity of the application.

RESPONSE:

The estimated time periods in the schedule have been extended. The time allocated for the preparation and submission of the application has been increased to 60 days plus an allowance for the four holidays.

ISSUE: Allow more time for IHS Area review of application (Page I-7)

COMMENT:

The time period for the IHS Area review is too short, particularly if there are a significant number of applications from applicants in the area, considering the reduced staffing level in some of the IHS Areas.

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RESPONSE:

The time allocated for eligibility determination including the IHS Area review time has been increased to 45 days.

ISSUE: Application time frames (Page I-7)

COMMENT:

If the Agency is planning to solicit for applications at the end of calendar year 2005 and create a three year list of projects, then this needs to be stated clearly in the policy and in the announcement. This is meant to address small facilities needs. The application requires a great deal of information in a short period of time. Smaller facilities are at a disadvantage in that they rarely have the staff to donate to developing a comprehensive business plan and putting together a comprehensive funding package. It is also rare that they will have a tribal Construction company and need to develop a plan or draft construction contract to identify how the project will be constructed.

RESPONSE:

The SAP Application Kit now includes two fiscal years, FY 2005 and FY 2006. The estimated time periods in the schedule have been extended. The time allocated for the preparation and submission of the application has been increased to 60 days plus an allowance for the four holidays. The time allocated for eligibility determination including the IHS Area review time has been increased to 45 days. Regardless the size of the applicant Tribe, proper planning is needed to ensure correct and efficient use of SAP funding.

ISSUE: The OMB Public Reporting Burden estimate of time (Page II-1)

COMMENT:

The reporting burden (OMB 1076-0136) of 40 hours appears very underestimated.

RESPONSE:

As stated in the notice in the Application Kit for the OMB Public Reporting Burden, the estimated 40 hours represents only the time needed for information collection, and does not represent the total estimated time to collect the information and prepare the application.

ISSUE: Clarification of receipt point for late application determination (Page II-3)

COMMENT:

Clarify if the late application date references its receipt at either the Area or IHS headquarters or both.

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RESPONSE:

This has been clarified in the Application Kit. Applications must be received by the Headquarters, Division of Facilities Planning and Construction by the due date; or, sent on or before the established deadline date.

ISSUE: Non-conforming applications (Page II-3)

COMMENT:

Non-conforming applications must be returned immediately to the tribe with explanation on its rejection. Past SAP awards deliberately ignored this even though required in the SAP guidelines.

RESPONSE:

Addressing this concern, the current application has been structured so the applicant will be able to determine eligibility without question prior to submitting an application. In other words, an application should not be submitted unless the project is eligible. Section B of Part 1 is designed to assist the applicant in this determination. Also, the Application Checklist will assist the applicant in providing only the information needed for rating and selection. When non-conformance is noted in an application, that application will not be processed any further.

ISSUE: Release of ranking information (Pages II-4 & II-7)

COMMENT:

Provide justification why information on the “ranking” of projects is denied under the Freedom of Information Act as exempted.

RESPONSE:

The Freedom of Information Act (FOIA) allows access to Federal records, except those records which have been exempted by the Act. The rank order listing is established solely for use by the approving official to make final selections for award of FYs 2005 – 2006 SAP projects, and is exempt from release under FOIA. The rank order for this selection will not be used in future selections. The selection of future projects will be based on the evaluation of the merits of the applications submitted in the future.

ISSUE: Release of selection ranking (Pages II-4 and II-7)

COMMENT:

Why is the Agency afraid to release the ranking of all applicants? The position of the Agency makes no common sense in principle or practice when actions by all other agencies are reviewed. If this position is retained for a new priority system a Tribe will never know how to plan or adjust for actions or decisions of the Agency. The Agency should post the past awards and the

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scoring or rank order of any future projects. If they do not know how they scored they cannot appeal. The Agency needs to publish the results of the process. This could be as minimal as the number of applicants received, your position (180 out of 200 applications), and add a qualifier that this ranking is only applicable for this funding window. The next funding window, they would reapply and be rescored with the new batch of projects.

RESPONSE:

The IHS will not release information that is generated solely for use by the approving official in making the final selections for award of FYs 2005 – 2006 SAP projects. The release of this information would serve no useful purpose to anyone else, since the rank order for the projects selected in this process will not be used for any future selections. Future projects will be evaluated only on the merits of the applications submitted then.

As indicated on Page II-7, successful applicants will be notified. Names of applicants receiving awards will be posted on the IHS, OEHE, public website. The Selecting Official's decision is final. Therefore, there is nothing for the applicant to appeal in the pre-award phase of the SAP process. The number of applications received and general information about the received applications will be public knowledge after all awards have been made.

ISSUE: Appeals process

COMMENT:

This process is lacking or extremely weak and strikes a blow to the credibility of the Agency actions. Without a defined appeal process Tribes have no recourse but to contact the Agency Director, Department, or Congress when they are of the opinion there has been an administrative error or similar omission by the Agency. The Agency may wish to visit the appeal process proposed for the revised Construction Priority System. If the process is not viewed as fair and equitable, we will see Tribes lobbying Congress to add them or move them up on the list. The Agency needs to provide feedback on the applications and allow a tribe to appeal the evaluation.

RESPONSE:

As with the Federal grant process, there are no appeals in the selection process. Accordingly, since the SAP has been patterned after the grant process, the Selecting Official's decision is final.

ISSUE: IHS Area's validation of existing P.L. 93-638 services contract (Page II-4)

COMMENT:

The Area confirmation of an existing 638 contract/compact should suffice without further burden to the Area to provide copies of all the requested documentation that was mandatory to have the current 638 contract/compact.

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RESPONSE:

To ensure compliance with the authorizing law, the responsible IHS Area has to furnish the requested documentation with the IHS Area's certification endorsement

ISSUE: IHS Area's certification that proposed project is in Area's Master Plan (Page II-5)

QUESTION:

How does the IHS Area make the certification that the proposed project is consistent with the Area's Master Plan for Health Care Facilities if the Area does not have a formal master plan?

RESPONSE:

The instructions on Page II-5 states that if a formal master plan is not held by the IHS Area, the certification is to address the project's relationship with the overall concept of operations under which the IHS Area operates with its Tribes.

ISSUE: Release of IHS Area's certification and comments (Page II-5)

COMMENT:

The required Area certification and comments should be made available to the tribe immediately.

RESPONSE:

The respective IHS Area certification endorsement and comments are part of the internal IHS review process and are provided for official use only within the IHS. The process specified in the Application Kit requires an applicant - IHS Area collaborative process during the application preparation time, so both will be working together as a team in the application development. The Application Kit does not prohibit nor require the IHS Area to share with the applicant the certification endorsement and comments. This release is solely up the respective IHS Area.

ISSUE: Content of "Capability Brief" (Page II-6)

COMMENT:

More detail is required as to what will be used to subjectively evaluate the "capability briefs" to give tribes an indication of what information to provide in the short allotment of space. This might include the percentage of third party collections or other funding sources in comparison to the IHS contract/compact funds, etc.

RESPONSE:

As described on Page II-6, the "Capability Brief" will be evaluated to determine the applicant's capability to provide the necessary ambulatory care services for the projected user

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population after the project construction work is completed. It is up to the applicant to provide what the applicant feels would be the best to accomplish this requirement.

ISSUE: Evaluation of content of “Applicant Financial Contribution Brief” (Page II-6)

COMMENT:

More explanation and criteria for evaluation of the applicant’s financial contribution is needed. This was not intended as a “seed” program and the legislation makes no reference to contributions. Many tribes are applying for SAP because they are not affluent. Since IHS is not funding 100% of the construction in most cases, tribes need the SAP award in order to score higher with the CDBG. The CDBG projects have a low to moderate income requirement which means only the most needy are eligible for awards, thus tribes using CDBG funds are in need of additional financial support.

RESPONSE:

As described on Page II-6, the “Applicant Financial Contribution Brief” will be evaluated to determine the extent the applicant is willing to commit non-IHS resources to the project. Higher scores will be given to applicants who demonstrate the initiative to have the other funds, needed above that being received from the SAP, readily available, than the applicant who indicates a potential availability. Applicants who are willing to contribute funds other than SAP funding for the project and have those funds readily available will demonstrate a higher desire and readiness to accomplish the proposed project. The amount of the contribution will not affect this score.

ISSUE: Release of selection rankings (Page II-7)

COMMENT:

The “competitive rating and ranking” of the SAP projects should be publicized as the HUD, HRSA, and other agencies have done for years. This is critical for tribes that are not awarded projects in the first year to know if they will realistically have an opportunity thru SAP within the next fiscal year or so since IHS has a history of funding multiple years from their construction lists. Notice of position on the ranking list will allow tribes to exercise other options as a last resort. Individual applicants are entitled to see their score, as with other federal programs, to see where their application was weak and to allow improvement on future applications.

RESPONSE:

The rank order established for the FYs 2005 – 2006 SAP is an official use only tool used by the selecting official to determine which projects will be candidates for award in FYs 2005 & 2006 process. The rank order of those projects considered in this selection process would not have any bearing on any future application considerations. Future projects will be evaluated and scored by different reviewers considering the merits only of the applications submitted in

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the future. Since the results of this application cycle would not be considered in the future, there is no justification for releasing the information that has been used by this selecting official. Once awards are made, the scoring and ranking information has no meaning or bearing on any future actions, so this information will not be maintained or released for future use in selections.

ISSUE: Clarification of use of Construction Management Contract (Page III-3)

COMMENT:

Can Item 18 on Page III-3 requiring a statement about Construction Management Contract be explained? Why would we not want them to have Construction Management for the project? Should this have a qualifier that states not prior to award?

RESPONSE:

This item has been revised to reflect the requirement for the statement is needed to assure that the IHS is not paying the applicant for construction management services under another contract. It does not preclude the applicant from using a construction manager to perform the project for the applicant.

ISSUE: Use of assurance dealing with Federal property (Page III-3)

COMMENT:

The reference in the Assurances of Contract Award refer to a tribe electing to take title of federal property and disposing of federal property. How this relates to clinics constructed by tribes is unclear especially in referencing the Authorization and Award Conditions that state the federal government has no rights or title to the SAP clinic.

RESPONSE:

Using a hybrid P.L. 93-638 Sub-Part "J" contract to issue SAP awards has some idiosyncrasy. This required paragraph is one of them.

ISSUE: Relevancy of project being under construction (Pages III-5, III-9, & III-10)

COMMENT:

The Performance Period for Project in the Technical Proposal section provides self eliminating information. The application package requests starting and completion dates if already under construction, then notes that it is now not eligible. Since the SAP in most cases isn't paying 100% and there is no guarantee that a tribe will get a SAP, then whether the facility is under construction is irrelevant. A previous completed building is a different situation. The tribe is under obligation for whatever construction contract it signs and has no recourse to IHS if its SAP

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application is not funded. Many tribes are building projects in phases and may overlap or be difficult to separate into specific phases related to various sources of funding.

RESPONSE:

As discussed previously in the response for similar item on Page I-4, once a construction contract has been executed, the applicant essentially does not meet the need criteria in the authorizing language. The SAP is not intended to fund projects that have found other sources of funding to execute a construction contract. The applicant can plan and design the facility prior to the SAP award, but cannot start on-site construction.

ISSUE: Determination of service area populations (Page III-6)

COMMENT:

How will the Agency address shared service area populations and shared CHSDAs? This should be defined. At a minimum, the policy should state that they will follow the county and community splits as defined by the Areas and /or negotiated between the impacted Tribes.

RESPONSE:

In accordance with procedures in the Application Kit, the applicant, during the application preparation process, will obtain through the respective IHS Area, validated population figures for the respective service area for the proposed project from the IHS Headquarters Statistics office, for the existing services contract (Page III-6). Also, the IHS Area is to certify that the project is consistent with the Area's Master Plan (Page II-5). This should ensure that the service areas are properly depicted in the SAP application.

ISSUE: Nearest hospital factor in the Need for Project Calculation (Pages III-11, III-12 & III-16)

COMMENT:

Small tribes have concerns that the location with respect to a hospital will be “gamed” by larger tribes in order to develop feeder clinics. The manipulation of larger populations will allow larger tribes to unfairly compete against smaller tribes that don't have the additional ambulatory space included in the hospital. The use of the IHS supportable space policy does not appear to be included in the need for project calculations.

RESPONSE:

The “Need for Project Calculation” does not include the use of the supportable space formula. As indicated on Pages III-11 and III-12, the calculation considers the existing space size as related to the user population and adjusts the derived factor by the age and condition of the existing health care facility and the distance to the nearest hospital, within the definition provided on Page III-16. This calculation provides a basis for a comparison of the need for all four types of construction authorized in the SAP. The supportable space formula is used only

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for the “Capacity Certification” appearing on Page III-6. With the required IHS Headquarters Statistical and respective IHS Area certifications, any possible perceived “gaming” should be precluded.

ISSUE: Need for Project Calculation for leased facility (Pages III-11 & III-12)

COMMENT:

The Need for Project Calculations do not account for tribes that have been forced to lease facilities and thus do not own their existing facility. Without the lease, there would be no program thus indicating the highest need for space. Would a leased space by a tribal program with a 638 contract indicate a zero in the existing size of health facility and thus score the maximum points?

RESPONSE:

The “Need for Project Calculation” does not preclude the existing facility from being leased. Applicants using a leased building are to perform the same calculation as an applicant that owns their facility. The calculation is NOT to reflect a zero if the existing facility is leased. The leased facility would be the current means to deliver health care services.

ISSUE: Need for Project Calculation for various types of projects (Pages III-11 & III-12)

COMMENT:

In the subjective scoring, how will the issue of new or total replacement verses modernization or expansion be considered?

RESPONSE:

The “Need for Project Calculation” is not subjective. As discussed on Pages III-11 and III-12, this calculation develops a basis for a comparison of the need for all of the authorized type of construction being funded by the SAP, and considers the existing space as related to the user population and adjusts the derived factor by the age and condition of the existing health care facility and the distance to the nearest hospital, within the definition provided on Page III-16.

ISSUE: Definition of Distance used in the “Need for Project Calculation” (Pages III-12 & III-16)

COMMENT:

The distance to a hospital is unclear if it is as the crows flies or by road. Travel time, as proposed in the Health Facilities Construction Priority System, would be a better indicator of remoteness.

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RESPONSE:

As stated on Page III-16 in the definition for “Distance,” there is no distinction between the types of transportation. The type of travel to be used in the calculation is that which is available for patients.
